

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application Number: 09/954,526

Art Unit: 1745

Applicants: James F. PITZEN, et al.

Examiner: John S. MAPLES

Filed: March 5, 2001

Confirmation No. 6141

Title: A Combination  
Rechargeable, Detachable  
Battery System and Power  
Tool

Reissue of Patent No.: 5,792,573

Attorney Docket No.: 54525.000055

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**DECLARATION OF GENE WARZECHA UNDER 37 C.F.R. § 1.131**

Sir,

I, Gene Warzecha, declare the following:

1. I am authorized to act on behalf of Linvatec Corporation, a corporation existing under the laws of the state of Florida and having a principle place of business at 11311 Concept Blvd., Largo, FL 33773 and that I have been authorized by Linvatec Corporation to make this Declaration under 37 C.F.R. §1.131(a).

2. Linvatec Corporation is the assignee of the entire right, title, and interest in the patent application identified above by virtue of a chain of title from the inventors, of the patent application identified above, to the current assignee.

3. The application identified above is a continuation of application no. 09/637,339, filed August 11, 2000 (now abandoned), which application is a reissue of application no. 08/692,886, filed July 24, 1996 (now U.S. Patent No. 5,792,573), which application is a divisional of application no. 08/258,338, filed June 10, 1994 (now U.S. Patent No. 5,553,675). Accordingly, the present application claims a priority filing date of June 10, 1994.

4. To the best of my knowledge, James F. Pitzen, Jeffrey D. Smith and Charles E. Alexson (collectively "the Inventors") are co-inventors of the invention described and claimed in the above-identified patent application, as evidenced by a copy of the executed oath filed in application no. 08/258,338, attached as Exhibit A.

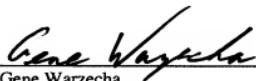
5. Prior to February 10, 1994, the Inventors conceived of the invention. Conception of the invention is evidenced by drawings of an embodiment of the invention prepared prior to February 10, 1994. Date-redacted copies of the drawings are attached as Exhibit B.

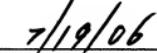
6. The applicant proceeded with due diligence from a date prior to February 10, 1994 until at least the priority filing date of June 10, 1994 as evidenced by the following:

- a. Memos dated February 13, 1994 from Jeff Hohenshell, intellectual property counsel for then assignee 3M, to the Inventors regarding a rough draft of a patent application for the invention. Copies of the memos are attached as Exhibit C. The memos suggest the need for at least one meeting with the Inventors and an ongoing process in order to complete the application.
- b. Correspondence between Jeff Hohenshell and Gary Weinstein, an attorney with the law firm of Faegre & Benson, regarding the application. This correspondence is attached as Exhibit D and includes: a June 6, 1994 letter from Mr. Hohenshell to Mr. Weinstein; and a June 9, 1994 letter from Mr. Weinstein to Mr. Hohenshell. These letters indicate that ongoing application preparation as well as additional written and oral communication occurred during this time, including the time period from February 13, 1994 to June 6, 1994.

7. All statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

DECLARANT:

  
Gene Warzecha  
Assistant Secretary  
Linvatec Corporation  
11311 Concept Blvd.  
Largo, FL 33773

  
Date

# **EXHIBIT A**

## OATH, POWER OF ATTORNEY, AND PETITION

Being duly sworn, We, James F. Pitzen, Jeffrey D. Smith and Charles E. Alexson, depose and say that: (1) our respective residences, citizenship, and mailing addresses are indicated below; (2) we have reviewed and understand the contents of attached specification, including the claims, as amended by any amendment specifically referred to herein; (3) we verily believe that we are the original, first, and joint inventors or discoverers of the invention or discovery in

## ORTHOPEDIC SURGICAL DEVICE

described and claimed therein and for which a patent is sought; and (4) we hereby acknowledge our duty to disclose to the Patent and Trademark Office all information known to us to be material to the patentability as defined in Title 37, Code of Federal Regulations, §1.56.

We hereby appoint Gary L. Griswold (Reg. No. 25,396), Walter N. Kim (Reg. No. 21,196), Roger R. Tamte (Reg. No. 21,093), Terry K. Qualey (Reg. No. 25,148), Warren R. Bovce (Reg. No. 26,434), Carolyn A. Bates (Reg. No. 27,853), Gerald F. Chernivec (Reg. No. 26,537), John C. Barnes (Reg. No. 20,278), and Jeffrey J. Hohenshell (Reg. No. 34,109) our attorneys with full powers (including the powers of appointment, substitution, and revocation) to prosecute this application and any division, continuation, continuation-in-part, reexamination, or reissue thereof, and to transact all business in the Patent and Trademark Office connected therewith; the mailing address and the telephone number of the above-mentioned attorneys are

Attention: Jeffrey J. Hohenshell  
3M Office of Intellectual Property Counsel  
P.O. Box 33427  
St. Paul, Minnesota 55133-3427

Telephone No. (612) 733-1500

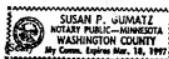
Wherefore, we pray that Letters Patent be granted to us for the invention or discovery described and claimed in the attached specification and we hereby subscribe our names to the foregoing specification and claims, oath, power of attorney, and this petition, this 10th day of January, 1994.

*James F. Pitzen*  
1-00

James F. Pitzen  
Residence: City of Maplewood, County of Ramsey, State of  
Minnesota  
Citizenship: United States of America *MN*  
Post Office: P.O. Box 33427  
Address: St. Paul, Minnesota 55133-3427

STATE OF MINNESOTA }  
} ss.  
COUNTY OF RAMSEY }

Before me personally appeared James F. Pitzen, to me known to be the person described in the above application for patent, who signed the foregoing instrument in my presence, and made oath before me to the allegations set forth therein as being under oath, on the day and year aforesaid.



*Susan P. Gumatj*  
Notary Public

\*Title 37, Code of Federal Regulations, §1.56 is reproduced on the back of this page  
This form may be executed only when attached to the specification (including claims) as the last page thereof. O-SN-Jru-031392

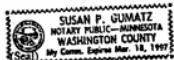
Wherefore, we pray that Letters Patent be granted to us for the invention or discovery described and claimed in the attached specification and we hereby subscribe our names to the foregoing specification and claims, oath, power of attorney, and this petition, this 10th day of June, 1994.

*Jeffrey D. Smith*

2-00 Jeffrey D. Smith  
Residence: Marin on St. Croix, County of Washington, State  
of Minnesota *MN*  
Citizenship: United States of America  
Post Office: P.O. Box 33427  
Address: St. Paul, Minnesota 55133-3427

STATE OF MINNESOTA } ss.  
COUNTY OF RAMSEY }

Before me personally appeared Jeffrey D. Smith, to me known to be the person described in the above application for patent, who signed the foregoing instrument in my presence, and made oath before me to the allegations set forth therein as being under oath, on the day and year aforesaid.



*Susan P. Gumatjat*  
Notary Public

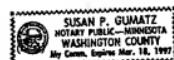
Wherefore, we pray that Letters Patent be granted to us for the invention or discovery described and claimed in the attached specification and we hereby subscribe our names to the foregoing specification and claims, oath, power of attorney, and this petition, this 10th day of June, 1994.

*Charles E. Alexson*

3-00 Charles E. Alexson  
Residence: City of River Falls, County of Pierce, State of  
Wisconsin *WI*  
Citizenship: United States of America  
Post Office: P.O. Box 33427  
Address: St. Paul, Minnesota 55133-3427

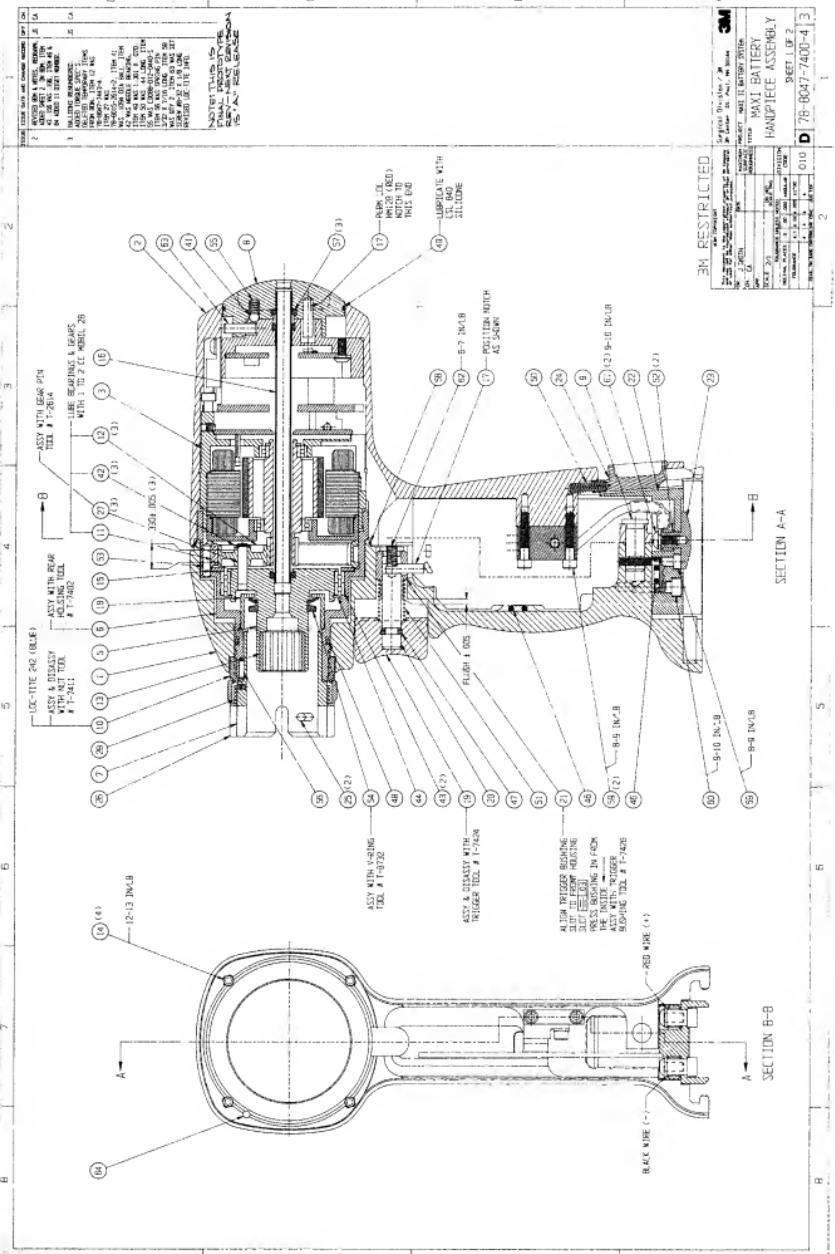
STATE OF MINNESOTA } ss.  
COUNTY OF RAMSEY }

Before me personally appeared Charles E. Alexson, to me known to be the person described in the above application for patent, who signed the foregoing instrument in my presence, and made oath before me to the allegations set forth therein as being under oath, on the day and year aforesaid.



*Susan P. Gumatjat*  
Notary Public

# **EXHIBIT B**



REDACTED

3M RESILIN

MAXI BATTERI		HANDPIECE ASSEMBLY	
REF. NO.	201	REF. NO.	202
DESCRIPTION	MAXI PLATE	DESCRIPTION	MAXI PLATE
ITEM NO.	10	ITEM NO.	10

112

REDACTED

הנִזְנִזְנִיָּה

REDACTED

3M RESTRICTED

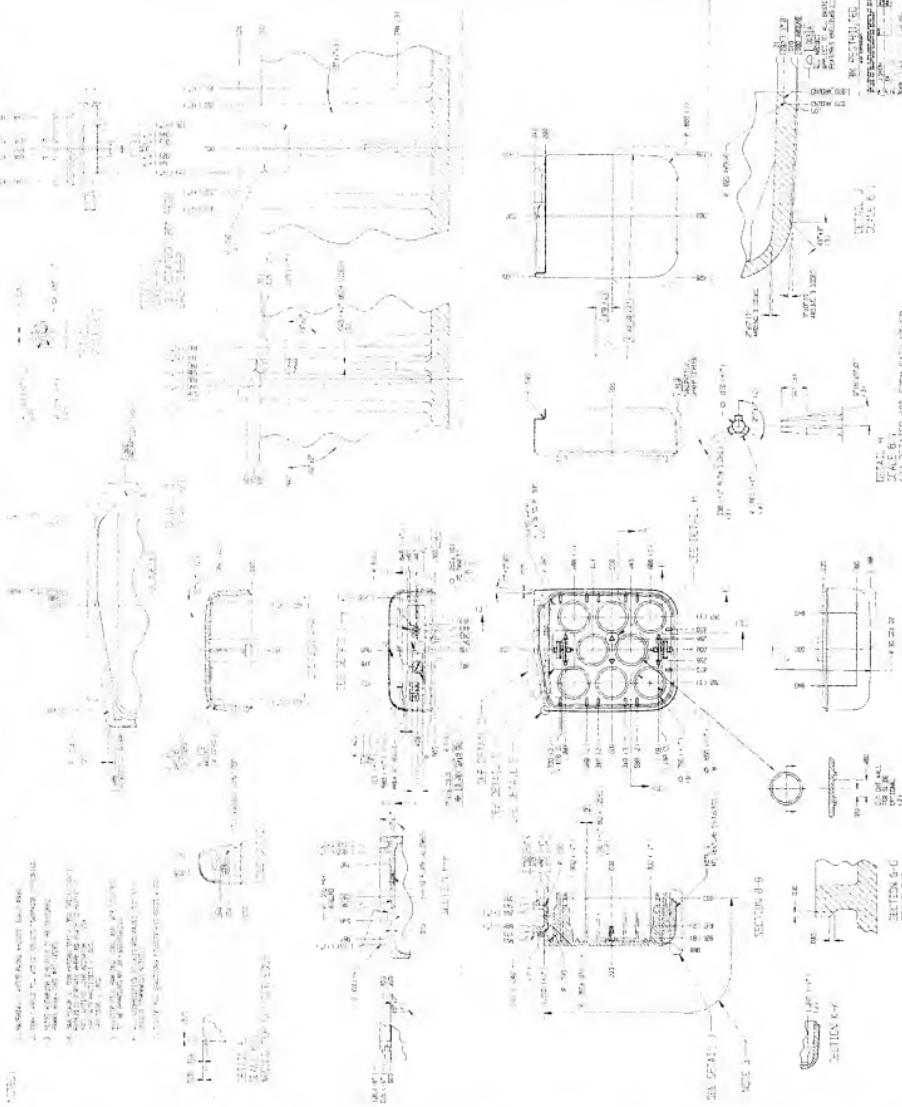
卷之三

REDACTED

卷之三

四

10





REDACTED

3M RESTRICTED

# **EXHIBIT C**

CONFIDENTIAL ATTORNEY - CLIENT  
PRIVILEGE ATTORNEY WORK PRODUCT



To: Jim Pitzen 270-4N-09  
Chuck Alexson 270-4N-09  
  
From: Jeff Hohenshell 3-1555  
  
Re: Pitzen et al., 3M ref. no.: 50306 USA 6A  
  
Date: February 13, 1994

---

Enclosed is a very rough draft of the above-identified application.

Please carefully review the enclosed application and provide me with your comments and the requested information. Please note this application contains attorney-client privileged material. Thus, it is important that you do not make any copies of this application, and that you return it to me with your comments.

With respect to the requested drawings, you may either send them to me or to Kevin Anderson (3-1541). Since our drafting department is currently overwhelmed with work, please send us the drawings as soon as possible. Any assistance that you could give us in this regard would be most appreciated by both our drafting department and me.

Once I have your comments on the draft, I can begin the process of completing it. I suggest that a meeting would be appropriate to discuss this draft. Please let me know when you are available for such a meeting.

Thank you for your help on this application. If you have any questions, please give me a call.

1/17

Jeffrey J. Hohenshell

cc: Jim Pitzen  
Chuck Alexson  
Jerry Peterson (memo only)

Minnesota Mining and  
Manufacturing Company

PO Box 33427  
St. Paul, MN 55133-3427 USA  
612 733 1555  
612 736 3833 Facsimile  
29 7023 Telex  
PATENTS Cable



To: Kevin Anderson  
From: Jeff Hohenshell  
Re: Pitzen et al., 3M ref. no.: 50306 USA 6A  
Date: February 13, 1994

---

Enclosed is a rough draft of the above-identified application.

At this point there are ten figures in the application, although several additional drawings may be added.

Please add the reference characters to these drawings and return them to me as you have the opportunity. I have attached a parts list for your convenience. Please let me know if you cannot work on this application this week. I expect to supply you with the additional drawings early this week.

Thank you for your help on this application. If you have any questions, please give me a call, or call Jim Pitzen (3-7273) or Chuck Alexson (6-3197).

Jeff

cc: Jim Pitzen  
Chuck Alexson

**Minnesota Mining and  
Manufacturing Company**

PO Box 33427  
St. Paul, MN 55133-3427 USA  
612 733 1555  
612 736 3833 Facsimile  
29 7023 Telex  
PATENTS Cable

# **EXHIBIT D**

June 6, 1994

CONFIDENTIAL ATTORNEY - CLIENT  
PRIVILEGE ATTORNEY WORK PRODUCT



Gary Weinstein  
Faegre & Benson  
2200 Northwest Center  
90 South Seventh Street  
Minneapolis, MN 55402-3901

VIA FEDERAL EXPRESS

Dave Robbins  
Patent Liaison  
275-2E-11

Jeffrey D. Smith  
Inventor  
270-4N-09

Chuck Alexson  
Inventor  
270-4N-09

James Pitzen  
Inventor  
270-4N-09

Re: Proposed Patent Application for an Orthopedic Surgical Device  
3M Ref: 50306USA6A

Dear Gentlemen:

Enclosed is a final, draft copy of the above-identified case. This includes 36 pages of text and 10 sheets of drawings.

Please carefully review the enclosed patent application. Once I have everyone's comments on this draft, I will prepare the formal papers for filing this application. To the persons addressed as inventors in this letter, please note that there are three fill-in-the-blanks with some informal details that I would like to add to this application.

Please review these documents as soon as you have the opportunity. Once you have reviewed this application, we can file it at the U.S. Patent Office along with the two design patents that we have previously discussed.

Once I have heard from everyone, I will attempt to set up a time where the inventors may execute the formal papers for this case.

Minnesota Mining and  
Manufacturing Company

PO Box 33427  
St. Paul, MN 55133-3427 USA  
612 733 1555  
612 736 3833 Facsimile  
29 7023 Telex  
PATENTS Cable

Mr. Gary Weinstein  
Page Two  
June 6, 1994

Again, please let me have your comments as soon as you have the opportunity, as I would like to have an early filing date for this application and the two design patent applications.

Thank you again for your assistance with this case.

Yours,



Jeffrey J. Hohenshell

Enclosures

c: Jerry Peterson  
270-4N-09 (letter only)

JJH/mls:D1:weinst.ltr2

FAEGRE & BENSON  
200 NORWEST CENTER  
60 SOUTH SEVENTH STREET  
MINNEAPOLIS, MINNESOTA 55402-3001

612/336-3000  
FACSIMILE 612/336-3088

June 9, 1994

GARY S. WEINSTEIN  
612/336-3482

VIA FACSIMILE

Mr. Jeffrey J. Hohenshell  
Intellectual Property Counsel  
MINNESOTA MINING AND MANUFACTURING COMPANY  
P.O. Box 33427  
Saint Paul, Minnesota 55133-3427

**REDACTED**

RE:

Patent Application for Orthopedic Surgical Device  
Our File: 27987-111901  
Your File: 50306USA6A

Dear Jeff:

Enclosed are the proposed changes I would make to the above-referenced patent application. Several of the changes are random grammatical items which I noticed while reviewing the application. The major portion, as you requested, is for the description of the electrical components of the device.

On page 1, line 19, delete the ",".

On page 4, line 20, after "to" insert -,-.

On page 5, line 33, replace "comprise" with --comprises--.

On page 10, line 21, after the word "example" insert -,-.

On page 26, line 13, replace "through" with --62 by--.

DENVER

DES MOINES

WASHINGTON, D.C.

LONDON

FRANKFURT

Mr. Jeffrey J. Hohenshell  
June 9, 1994  
Page - 2 -

On page 26, line 13, after "field" insert --,--.

Replace the paragraphs beginning at page 12, line 20 and continuing through page 13, line 28 with the following:

The drive assembly 10 also includes electrical circuit means operatively associated with the trigger assembly 40 for controlling the motor 12. The illustrated electrical circuit means comprises an on/off hall sensor 52 and a speed control hall sensor 54.

The on/off hall sensor 52 is a digital hall sensor having an output signal with two levels corresponding to an on state and an off state. The on/off hall sensor 52 senses the presence of a magnetic field from the magnet 44 on the trigger assembly 40. When the trigger assembly 40 is released, the magnet 44 is positioned directly over the on/off hall sensor 52 (Figure 2). The magnet's 44 magnetic field causes the on/off hall sensor 52 to produce an output signal corresponding to an off state. As the trigger assembly 40 is depressed, the magnet 44 moves away from the on/off hall sensor 52. The on/off hall sensor 52, no longer sensing the presence of a magnetic field, produces an output signal corresponding to an on state.

The output signal from the on/off hall sensor 52 is conditioned by electrical circuitry which provides a standby signal when the on/off hall sensor 52 produces an off signal. The standby signal disables motor drive circuitry and the speed control hall sensor 54. The standby signal therefore ensures that the motor 12 is off whenever the trigger assembly 40 is in a released position (Figure 2). An added benefit of disabling the motor drive circuitry and the speed control hall sensor 54 is that the electrical power required by the device 10 is significantly reduced during periods when the trigger assembly 40 is not depressed. This current reduction during a standby mode improves energy

Mr. Jeffrey J. Hohenshell  
June 9, 1994  
Page - 3 -

efficiency of the device 10. In this manner, the device 10 may optionally include a battery saver feature.

The speed control hall sensor 54 is a linear hall sensor which provides a speed control signal having a range of levels based upon the strength of the magnetic field that the variable speed hall sensor 54 detects. As the strength of the magnetic field increases, the speed control hall sensor 54 produces a speed control signal with a higher level. As the trigger assembly 40 is depressed, the magnet 44 moves towards the speed control hall sensor 54 and increases the magnetic field across it. The speed control signal from the speed control hall sensor 54 is conditioned and drives the motor control circuit to provide motor speeds proportional to the speed control signal. Therefore, as the trigger assembly 40 is further depressed, the motor control circuitry increases the motor speed of the drive assembly 10. In this manner, the drive assembly 10 may optionally comprise a variable speed device.

If you have any questions, please feel free to call.

Very truly yours,

  
Gary S. Weinstein

GSW:dl

MILLIONDA.WPS